Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States
October Term, 2001

GLENDA S. SCOVILLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari To
The United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Lowell H. Becraft, Jr.
209 Lincoln Street
Huntsville, AL 35801
(205) 533-2535
Petitioner's Counsel of Record

Of Counsel:
Jeffrey A. Dickstein
P.O. Box 150124
Tulsa, OK 74115
(918) 280-9606

36 pp

QUESTIONS PRESENTED

I. Whether the Court of Appeals incorrectly held that the IRS could use a nominee theory to levy fire insurance proceeds of a non-delinquent wife to collect her husband's delinquent taxes when he (1) was not an insured as a matter of law, (2) was not an insured as a matter of fact, and (3) had no insurable interest in the underlying property.

II. Whether the Court of Appeals incorrectly held that real property purchased and titled in the name of a non-delinquent spouse was owned by her husband and could be reached to pay his debts when that holding is in violation of and contrary to Missouri's Married Womans Act.

III. Whether the Court of Appeals incorrectly held that the IRS could levy on real property purchased in the name of a non-delinquent wife to collect her husband's future tax delinquencies, by finding that the property was held as a nominee of the family, in a State that presumes marital property is taken as tenants by the entirety.

IV. Whether the Court of Appeals incorrectly upheld the admission of depositions of local witnesses on a finding that they were "unavailable" when the United States stipulated the witnesses were home the night before.

LIST OF PARTIES

All parties appear in the caption of the case.

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OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported as *Scoville v. United States of America*, 250 F.3d 1198 (8th Cir. 2001).

The Memorandum and Order of the district court appears at Appendix B to the petition and is reported as *Scoville v. United States of America, 2000-1 U.S. Tax Cas. (CCH) P50,163; 85 A.F.T.R.2d (RIA) 502; 1999 U.S. Dist. LEXIS 20426* (W.D.Mo, 1999).

JURISDICTION

The date on which the United States Court of Appeals decided the case was May 29, 2001.

No petition for rehearing was filed in this case.

The jurisdiction of this Court is invoked under *28 U.S.C. §1254(1)*.

The basis of jurisdiction in the district court was *28 U.S.C. §§ 1331, 1340 and 1346(e)*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves application of the following constitutional and statutory provisions:

No person . . . shall. . . be deprived of . . . property, without due process of law.

U.S. CONST. amend. V.

All real estate and any personal property, including rights in action, belonging to any woman at her marriage, or which may have come to her during coverture, by gift, bequest or inheritance, or by purchase with her separate money or means, or be due as the wages of her separate labor, or has grown out of any violation of her personal rights, shall, together with all income, increase and profits thereof, be and remain her separate property and under her sole control, and shall not be liable to be taken by any process of law for the debts of her husband.

V.A.M.S. 451.250.1

STATEMENT OF THE CASE

Petitioner, a married woman, purchased real property in her name on February 23, 1983. $40,000 of marital property was used for the down payment, and Petitioner executed a mortgage for the remainder of the purchase price. Petitioner purchased and maintained fire insurance for the property and the personalty located threon.

Petitioner and her husband, Joe May, divorced on December 23, 1983. Petitioner was awarded certain personal property in the divorce in lieu of alimony which she leased back to May, and was awarded child support. Petitioner worked in her now ex-husband's dental practice and received income from that work.

Petitioner filed income tax returns and paid taxes

on all of her income.

Petitioner used her after tax dollars to pay her mortgage and her fire insurance premiums. In November 1988, Petitioner paid off the mortgage with her own funds.

On November 3, 1992, May, who had ceased filing income tax returns, was indicted for tax crimes. In anticipation of the indictment, Petitioner remarried May in August 1, 1992 in order to avoid having to testify against "the father of her children."

On June 11, 1993, May was jeopardy assessed for federal income taxes for the tax years 1985-1989.

In November 1992, Petitioner went to Costa Rica for a vacation, and shortly thereafter took up residency in Costa Rica, having rented a house and finding employment. At all times hereinafter mentioned, Petitioner lived in Costa Rica and May lived in the United States.

On April 12, 1993, Petitioner's house and its contents were completely destroyed by fire. The IRS levied the fire insurance proceeds checks that would have been issued to Petitioner as a "nominee" of May.

Petitioner filed a wrongful levy action. During trial, the district court allowed, over Petitioner's objection, deposition testimony of two witnesses on the ground that the witnesses were not available. The parties stipulated that both witnesses were present in their homes, in the district, the day before their

deposition testimony was admitted.

The district court found Petitioner was the nominee of May and upheld the IRS's nominee levy. The Eighth Circuit affirmed the district court.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE EIGHTH CIRCUIT CONFLICTS WITH THE DECISION OF THE TENTH CIRCUIT ON THE SAME IMPORTANT MATTER.

In *Pate v. United States, 949 F.2d 1059 (10th Cir. 1991)*, a delinquent taxpayer purchased a home for his wife and had title placed in her name. The delinquent taxpayer was the only family member with income and he paid the mortgage and remodeling expenses. He also lived on the property with his wife. The IRS subsequently issued liens against the delinquent taxpayer and claimed the liens attached to his wife's real property. *Pate, 949 F.2d at 1059-60.*

The district court found that a resulting trust arose in favor of the delinquent taxpayer primarily because he bought the property for his wife. The Tenth Circuit reversed when it acknowledged, under Oklahoma law, the well-established exception to the resulting trust theory that when a husband purchases property for his wife, not only is the resulting trust presumption inapplicable, but the wife is entitled to the opposing

presumption that the property is hers alone by way of a gift or advancement. *Pate, 949 F.2d at 1060.* The Tenth Circuit found this to be such a well established principle of law that it held the contrary position of the United States to be without substantial justification. *Pate v. United States, 982 F.2d 457 (10th Cir. 1993).*

In direct opposition to the decision in *Pate,* the Eighth Circuit failed to apply the well-established Missouri exception to the resulting trust theory, *Gilliland v. Gilliland, 96 Mo. 522, 525, 10 S.W. 139 (1888)*, and also failed to apply the Missouri's *Married Womans Act, V.A.M.S. 451.250.1,* requiring the same result reached in *Pate.*

Therefore, *certiorari* should be granted to resolve the conflict between the conflicting decisions of the Tenth Circuit and Eight Circuit on the same important issue of law.

II. THE SUPERVISORY POWERS OF THIS COURT ARE NECESSARY TO STOP A NATIONAL TREND, IN TAX CASES, TO SUPPLANT STATE LAW WITH A NEW SUBSTANTIVE FEDERAL RULE OF PROPERTY LAW.

A tax lien can attach only to a property interest owned by the delinquent taxpayer and the existence and extent of such an interest is governed by state law.

See, e.g., United States v. Rodgers, 461 U.S. 677, 683, 690-91, 76 L.Ed. 2d 236, 103 S.Ct. 2132 (1983). As evidenced by the decision below, Federal Courts are circumventing state law defining and protecting separate property interests of wives by applying in the place of state property law a new substantive federal rule.

That rule allows the IRS to levy on the separate property of non-delinquent wives. Not only does this encroach upon State sovereignty over property within its borders, but deprives the non-delinquent wives of due process and equal protection under the law.

In this case, Petitioner purchased real property and fire insurance on the real property and its contents. Under applicable state law, May was neither the owner of the real property nor did he have any interest in the fire insurance proceeds. The Eighth Circuit failed to apply the applicable State law pertaining to insurance contracts and property ownership, and chose instead to apply a broadening new substantive federal rule of property law to determine that the delinquent taxpayer actually owned the real property and therefore the contract of fire insurance.

First, the Eighth Circuit failed to give full faith and credit to the State Court's final judgment of divorce. Petitioner and May divorced and a State Court of competent jurisdiction entered a property settlement order. Notwithstanding the validity and finality of this

State Court's final judgment, the Eighth Circuit used the fact that Petitioner was awarded certain of the property as evidence that the property was in fact still owned by her ex-husband. *App. p. 2-3* .

Second, the Eighth Circuit looked to federal "badges of fraud" under the State's fraudulent conveyance act to support a nominee theory. *App. p. 7* . This was clear error because: 1) May never owned the real property in the first instance and did not transfer it to Petitioner; 2) the real property was purchased prior to the first tax assessment so there was no creditor and the tax lien could not attach as a matter of law, *St. Louis Union Trust Co. v. United States, 817 F.2d 1293, 1300-01 (8th Cir. 1980)*; and 3) May was never insolvent since he continued to own his dental practice that was of such a value it generated the large tax liability forming the basis for the underlying jeopardy assessments.

Third, the Eighth Circuit failed to apply Missouri law specifying that if there was in fact a fraudulent transfer of the real property, title to the property would revert to tenancy by the entirety, which is exempt from levy by creditors for the separate debts of one of the tenants. *U.S. v. Schneider, 926 F.2d 777, 779 (8th Cir. 1991).*

Fourth, the Eighth circuit failed to apply both Missouri statutory law, *V.A.M.S. 451.250.1*, and Missouri case law from its highest court, *Gilliland,*

id., that hold the property purchased by Petitioner is her separate property and cannot be reached by creditor's of her husband for his separate debts.

Fifth, the Eighth Circuit cited and relied on case law pertaining to corporations in a non-corporate case. Other circuits do the same. *See, Shades Ridge Holding Co. v. United States, 888 F.2d 725, 728 (11th Cir. 1989); Valley Finance, Inc. v. United States, 203 U.S. App. D.C. 128, 629 F.2d 162, 171-72 (D.C. Cir. 1980).*

The creation of a new federal rule of property law, contrary to applicable state law, so far departs from state court of last resort decisions regarding property ownership, and so far strays from the decision of this Court in *United States v. Rodgers*, that *certiorari* is necessary to implement the exercise of this Court's supervisory power.

III. IN ALLOWING THE DEPOSITION TESTIMONY OF WITNESSES WHO WERE WITHIN THE DISTRICT, THE EIGHTH CIRCUIT SANCTIONED THE DEPARTURE FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

The Eighth Circuit failed to apply the requirement of Fed. R. Evid., Rule 804 when it affirmed the district court's admission of deposition testimony of

hostile witnesses who were present in the district the day of the admission of their testimony. *United States v. Johnson, 108 F.3d 919, 922 (8th Cir. 1996)*. The testimony was that May paid off Petitioner's mortgage with a $10,000 money order. Petitioner's direct evidence, consisting of the written records of the mortgagor, showed no such payment was ever made. The district court relied heavily on the deposition testimony to circumvent the result required by applicable state law. In doing so, the Eighth Circuit failed to address its departure from *Johnson*, stating only that Petitioner's argument was without merit. The action denied Petitioner of her right of cross-examination.

Not only is this decision further evidence of the extent of the federal court's creation of a new substantive federal rule of property law addressed above, but it is a clear departure from the accepted and usual course of judicial proceedings.

Therefore, *certiorari* is necessary to implement the exercise of this Court's supervisory power.

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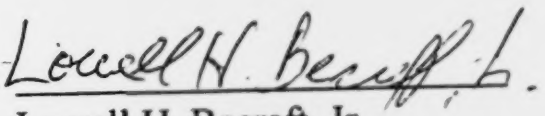
CONCLUSION

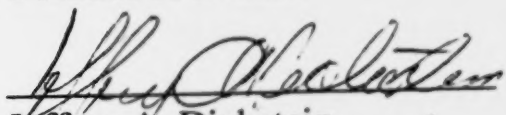
For each and the cumulative effect of all of the above grounds, a writ of certiorari should issue.

The decisions below should be reversed.

Respectfully submitted,



Lowell H. Becraft, Jr.
Counsel of Record



Jeffrey A. Dickstein
Of Counsel

August 12, 2001

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 00-1787

Glenda S. Scoville,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the Western
	*	District of Missouri.
United States of America,	*	
	*	
Appellee.	*	

Submitted: January 12, 2001

Filed: May 29, 2001

Before BEAM and MORRIS SHEPPARD ARNOLD, Circuit Judges, and DOTY,[1] District Judge

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1. The Honorable David S. Doty, United States District Judge for the District of Minnesota, sitting by designation.

BEAM, Circuit Judge.

Glenda Scoville appeals a district court[2] judgment sustaining, in part, a tax levy on insurance proceeds payable to her under a fire insurance policy. We affirm.

In May of 1975, Scoville married a dentistry student named Joseph May, and supported him until his graduation. In 1979, May opened a dental practice in Jefferson City, Missouri. He prevailed upon Scoville to work for his practice without salary, which she did for five years. May subsequently opened another practice in Kansas City, Missouri. In 1979, May also became a self-styled "tax protestor," and failed to file tax returns from 1979 to 1993.

In 1983, the couple purchased a farm in Cleveland, Missouri. May's distrust of banks and paper money led him to collect $40,000 worth of nickels, dimes and quarters. The couple used this amount to make a down payment on the property. Neither May nor Scoville could recall to which of them this money belonged. May suggested it was Scoville's as she had worked for him for five years without salary. However, when asked how he had convinced her to accept such a working arrangement, he testified, "I'm a sly devil." Scoville on the other hand could not identify what portion of the $40,000 belonged to her. The farm was titled in Scoville's name, and she signed a $60,000 promissory note and a securing deed of trust for the balance of the purchase price.

May and Scoville divorced in December of 1983. In the divorce settlement, Scoville took ownership of the farm, valued at $100,000, along with May's dental equipment including his chairs, x-ray machines and office furnishings. May received a

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2. The Honorable Howard F. Sachs, United States District judge for the Western District of Missouri.

car and some accumulated gold and silver. Scoville subsequently leased May's dental equipment back to him. At trial, Scoville was unable to identify any property retained by May. After the divorce, Scoville received child support payments and began drawing a salary of $14,000 per year, which the district court found was unrelated to hours worked.

May and Scoville had two children while they were married and three more after the divorce. After the divorce, May continued to live at the farm when working in Kansas City. He continued to maintain personal property at the farm, including chickens for cockfighting, gold and silver reserves and dental equipment. On at least two occasions, he offered to sell the farm to third parties. May kept some additional property, registered in the name of the Basic Bible Church, at the farm, and also maintained a bank account under that name. He periodically provided Scoville with money for house payments.

In his dental practice, May also employed Helen Chalender and Traci Stroud, a mother and daughter. Chalender testified May told her that he used a $10,000 money order to pay off the outstanding mortgage on the farm and that he divorced Scoville in order to use her as a tax shelter. Stroud testified May paid her in cash, and recounted visiting various banks with him where he would cash checks from patients. He would endorse them with a highlighter, on the theory that the marker would not show up on a microfiche. May told her he did so in order to hide money from the IRS, and also told her he divorced Scoville in order to put assets in her name, where the IRS could not reach them.

May and Scoville remarried in August 1992, because of an IRS investigation into May's failure to file tax returns. In November of that year, May was indicted on various tax-related charges. That same month, Scoville left for Costa Rica, taking along her youngest son, where her four other children soon joined her. At trial, Scoville testified that she left the continental

United States partly in order to avoid having to testify against May.

While Scoville was in Costa Rica, May continued to live at the farm. In April, 1993, the farm was completely destroyed by fire. On April 15, May contacted State Farm insurance adjuster Jan Wagoner Combs to initiate the claims process under a policy which named Scoville as the insured. After Scoville learned of the loss she also contacted Combs. Rather than leave directions for contacting her in Costa Rica, which she suggested would be difficult, Scoville directed Combs to leave messages with May. May also directed Combs to deal with him. All correspondence between Combs and Scoville went through May's Jefferson City office. Combs referred to May as "Mr. I," meaning "Mr. Insured." May filled out and returned personal property inventory forms to State Farm. Needing more information, State Farm forwarded the forms to Scoville, who completed and signed them. May could not sign them as he had been incarcerated. State Farm subsequently issued two checks, one for $92,086 to cover damage to the farm improvements, and one for $60,688 for lost personal property. The IRS levied both checks to address a $179,185 jeopardy tax assessment against May.

Scoville filed a wrongful levy action against the United States under 26 U.S.C.§ 7426, alleging May had no interest in the insurance proceeds. The district court found first that May retained an interest in the insurance proceeds because Scoville held the farm as his nominee, and second that as a member of Scoville's household, May was an insured by definition under the policy. The district court awarded Scoville $46,648 in insurance payments for personal property she proved was hers alone, but sustained the government's levy as to the remainder of the payments for personal property and the payments for the destruction of the farm improvements. Scoville appeals.

The failure to pay federal taxes results in a lien on "all property and rights to property, whether real or personal, belonging to" the delinquent taxpayer. *26 U.S.C. § 6321.* The IRS may levy upon all property to which this lien attaches. *26 U.S.C. § 6331(a).* This levy power extends to property held in the name of persons or entities other than the delinquent taxpayer, to the extent that the taxpayer has an interest in such property. *See G.M. Leasing Corp. v. United States, 429 U.S. 338, 350 (1977).* To levy upon property held by a third party in which the delinquent taxpayer has an interest, the government must give notice to that party. Id.

Because such a levy will necessarily implicate the property rights of individuals other than the delinquent taxpayer, any person other than the delinquent taxpayer who claims an interest in the levied property may file an action against the United States under *26 U.S.C. § 7426(a)(1).* To prevail, a plaintiff must demonstrate "an interest . . . superior to the United States' interest in the property, and that the levy was wrongful." *Bremen Bank & Trust Co. v. United States, 131 F.3d 1259, 1262 (8th Cir. 1997).* The parties do not dispute that Scoville has an interest in the insurance proceeds so we focus only on the second element.

A levy is wrongful when made on property in which the delinquent taxpayer actually has no interest. *Pate v. United States, 949 F.2d 1059, 1060 (10th Cir. 1991).* The government bears the initial burden of persuasion as to the taxpayer's interest in the seized property. *Security Counselors, Inc. v. United States, 860 F.2d 867, 869 (8th Cir. 1988).*[3] Other

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3. Scoville argues that the government must further prove that it had probable cause for the levy at the time that it occurred, directing us to *Flores v. United States, 551 F.2d* (continued...)

circuits have required the government to prove a "nexus" between the levied property and the taxpayer, *see, e.g., Oxford Capital Corp. v. United States, 211 F.3d 280, 287 (5th Cir. 2000); LiButti v. United States, 107 F.3d 110, 118 (2d Cir.1997); Morris v. IRS, 813 F.2d 343, 345 (11th Cir. 1987); Flores v. United States, 551 F.2d 1169, 1174 (9th Cir. 1977)*, but have disagreed as to the requisite quantum of evidence, *compare Oxford Capital, 211 F.3d at 283 (requiring "substantial evidence"),with Flores, 551 F.2d at 1176 n.8* (requiring only a "preponderance of the evidence"). We do not take up this dispute as the evidence in this case satisfies even the more stringent substantial evidence standard. Once the government has cleared its hurdle, the plaintiff retains the ultimate burden to prove that the levy was wrongful. *Security Counselors, 860 F.2d at 869.*

In this case, the government bore the burden of proving a nexus between May and the proceeds of the insurance contract. Scoville then bore the burden of proving May lacked any interest in those proceeds. Whether May had such an interest is a question of state law. *United States v. Rodgers, 461 U.S. 677, 683 (1983).* We review the district court's application of state law de novo, and review its factual findings for clear error. *Lincoln Benefit Life Co. v. Edwards, 243 F.3d 457, 461 (8th Cir. 2001).*

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3. (...continued)
1169, 1174-75 (9th Cir. 1977), and *Oxford Capital Corp. v. United States, 211 F.3d 280, 287 (5th Cir. 2000)*. We do not reach this issue as the record indicates that the government did in fact have such probable cause. In 1991, a former colleague of Dr. May's informed the IRS that May had told him that he had divorced Scoville in order to put his (May's) house and office equipment in her name.

A nominee is one who holds bare legal title to property for the benefit of another. *Black's Law Dictionary (7th ed. 1999)*. Under Missouri law, one who holds such title has no actual interest in the property, which remains with the beneficial owner. *H. B. Deal Const. Co. v. Labor Discount Center, Inc., 418 S.W.2d 940, 946 (Mo. 1967); National Refining Co. v. Continental Dev. Corp., 189 S.W.2d 551, 553 (Mo. 1945)*. No Missouri court has delineated a precise test for determining whether a property holder is a nominee. Missouri courts have, however, provided a test for determining whether a conveyance is fraudulent. In such instances, Missouri courts look to "badges of fraud" which include:

> (1) a conveyance to a spouse or near relative; (2) inadequacy of consideration; (3) transactions different from the usual method of transacting business; (4) transfers in anticipation of suit or execution; (5) retention of possession by the debtor; (6) the transfer of all or nearly all of the debtor's property; (7) insolvency caused by the transfer; and (8) failure to produce rebutting evidence when circumstances surrounding the transfer are suspicious.

First Home Savs. Bank v. C & L Farms, Inc., 974 S.W.2d 621, 626 (Mo. Ct. App. 1998). These elements parallel those we have looked to in determining whether a property holder is in fact merely a nominee. For instance, in *Loving Saviour Church v. United States, 728 F.2d 1085, 1086 (8th Cir. 1984)*, applying South Dakota law, we looked to factors including whether the purported beneficial owner made personal use of the assets nominally held by another, how the assets were insured and managed, the relationship between the parties or entities, and whether consideration was paid for transfers. In *Shades Ridge Holding Co. v. United States, 888 F.2d 725, 728 (11th Cir. 1989)*, the court observed that both federal and state laws apply

the same basic notion in determining whether someone acts as a nominee–looking for who has "active" or "substantial" control. *Accord Valley Finance, Inc. v. United States, 629 F.2d 162, 171-72 (D.C. Cir. 1980)*. We think that faced with a similar situation, a Missouri court would likely apply this body of law.

Regardless of whether the relationship between May, Scoville and the property at issue was actually fraudulent, the evidence amply demonstrates May's retention of a beneficial interest in the farm and the insurance policy sufficient to carry the government's burden. The divorce agreement gave Scoville the farm along with most of May's property, including his dentistry equipment. Scoville could not name any item of property retained by May. May continued to live at and make use of the farm, and to treat it as his own. Chalender testified that May paid off the outstanding mortgage on the farm, and May dealt directly with the insurance adjustors when Scoville was in Costa Rica. The district court found that May structured all his dealings so as to protect his assets from taxation, and discredited all testimony to the contrary. Based on all the evidence before it, the district court found Scoville acted as May's nominee, a finding which is not clearly erroneous.

Scoville argues that under Missouri law, insurance proceeds are personal property and not subject to liens previously attached to the insured property. We note first that in *Phelps v. United States, 421 U.S. 330, 334-35 & n.5 (1975)*, the Supreme Court held that a tax lien runs to the thing owned by the taxpayer and anything substituted for it. In this case, the insurance proceeds were certainly substituted for the destroyed farm. Whether the Supreme Court intended to create a substantive federal rule of property law, supplanting state law to the contrary, is unclear. We need not reach that question, however, because Missouri law does not dictate a contrary

outcome.

Scoville directs us to *Herpel v. Farmers Ins. Co., 795 S.W.2d 508, 510 (Mo. Ct. App. 1990)*, which states that "where a property owner insures the property for his or her sole protection, a lienholder has no cognizable interest in the insurance policy." In this case, Scoville did not act "for her . . . sole protection" as required in *Herpel*. The district court found that despite the fact that the insurance payments were payable to Scoville, May was her sole source of income–he provided her with funds for property upkeep, paid off the mortgage and treated the property as his own. These facts support the conclusion that Scoville acted as May's nominee, not only in owning the farmhouse, but also in procuring the insurance policy.[4] Because she was acting on May's behalf, he gained a beneficial interest in the proceeds of the insurance contract. *See 3 Couch on Insurance § 42:73 (3d ed. 1997)*. As required by federal law, the tax lien attached to this interest as well as to May's pre-existing interest in the farm.

The government amply carried its burden in proving a nexus between May and the insurance proceeds. The burden of proof thus shifts back to Scoville to prove that in fact May had no such interest upon which to levy. We agree with the district court that Scoville did not satisfy this burden. Scoville failed to prove to whom the purchase money belonged, failed to explain her and May's course of conduct, and failed to adequately develop any factual or legal basis which would nullify May's

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4. Scoville also appeals the district court's conclusion that the State Farm insurance policy also covered May. The policy covered the named insured along with relatives who were members of her household. Given our resolution of the nominee question, we do not take up this challenge.

beneficial interest in the farm or the insurance proceeds. Scoville also appeals the district court's ruling permitting Chalender and Stroud to testify by deposition. We have considered Scoville's arguments and find them without merit.

Accordingly, the judgment of the district court is affirmed.

APPENDIX B

FILED Dec. 3, 1999
P.L. BRUNE, CLK.
U.S. DISTRICT COURT
WEST DISTRICT
OF MISSOURI

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GLENDA S. SCOVILLE,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Civil No.
	)	94-0936-CV-W-6
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM AND ORDER

The Internal Revenue Service levied on the fire insurance payments made by the State Farm Insurance Company under a policy that named the plaintiff, Glenda Scoville, as the insured to satisfy tax liabilities owed by her then husband, Dr. Joseph A. May. Plaintiff brought this wrongful levy suit under *§ 7426 of the Internal Revenue Code (26 U.S.C.)* alleging that the taxpayer, Dr. May, had no interest in the insurance payments ($92,086 for structural damage to real property and $60,688 for personal property), and that the levy was therefore wrongful.

The Government argues that Dr. May did have an interest in the property as he was an insured by definition on the policy and the plaintiff was simply Dr. May's nominee, holding property for him in her name to hide assets from the IRS.

Findings of Fact

The plaintiff, Glenda Scoville, married Joseph May in 1975. At this time, May was still in dental school. The plaintiff worked as a file clerk and an insurance policy typist in Kansas City to help put her husband through dental school. Scoville claims that at the time of her marriage, she and May contracted that if she put him through school, he would see that she had a farm. No such agreement, if any, was reduced to writing. Whatever hopes Scoville may have had, I find no credible evidence that May committed himself to acquire a farm for her.

Dr. May opened a dental practice in Jefferson City, Missouri, in 1979. That same year, May became a tax protestor, questioning the authority of the IRS and going to tax-protestor meetings. May did not file a tax return for 1979, or for several years thereafter, until 1993 when the IRS made a jeopardy assessment against him. Scoville worked for May at his dental office, but was not paid for her work in at least the years 1980, 1981, and 1982. When asked how he managed to have Scoville work for him for five years without paying her for her work, May replied, "I'm a sly devil."

On February 23, 1983, while Scoville and May were married, farm property located in Cleveland, Missouri ("the subject real property"), was purchased and titled in the name of Glenda S. Scoville. The real property was purchased with a down payment of $40,000 in coins. May had obtained the coins as a result of his suspicion of banks and paper money. Scoville testified at trial that she did not know how much of the $40,000 was hers and how much was May's. She did not know whether she had a bank account at the time the property was purchased.

May testified that he felt that most of the $40,000 belonged to Scoville because she had worked for him for five years with no salary. "If some of it was mine, I gave it to her." Scoville signed a promissory note for the balance of the purchase price of the real property in the amount of $60,000. Dr. May's name did not appear on the note or on the deed of trust which secured repayment of the note. Dr. May acknowledged at trial that part of the reason for titling the farm in the sole name of the plaintiff was to protect against litigation. May supported the family and made the mortgage payments from February 1983 until December 1983.

On December 23, 1983, Scoville and May were divorced. Very little about the family's relationship changed after the divorce, however. May continued to live at the farm when he was in town,[1] and the couple had three more children. May continued to keep his personal property at the farm, including chickens used for his cockfighting hobby, gold and silver that he had hoarded, and dental equipment. He also kept a black hearse at the farm, which he drove when protesting abortions and had in the name of the Basic Bible Church.[2] Scoville also continued working for May at his dental offices, at least part

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1. May had an office in Jefferson City, Missouri, and an office in south Kansas City, Missouri. Due to the distance between the two offices, he would spend a couple of days per week at each office. The farm property was close to the Kansas City office and May would usually stay there when he was in Kansas City. When May was in Jefferson City, he would stay at his office or with one of his tax-protestor friends.

2. May also had a 1988 Chevrolet Suburban which he placed in the name of the Basic Bible Church, and he had a bank account in the Church's name.

time, when she wasn't out "having babies."

In the divorce agreement, Scoville was given the entire interest in the farm, and Dr. May's dental chairs, x-ray equipment and office furnishings, which he used in his practice at both of his office locations. This dental equipment was then leased back to May by Scoville. When asked to identify the property which Dr. May retained after the divorce, Scoville testified, "I don't know if he had any other property. This is all mine." Besides the rent on the dental equipment, Scoville received child support payments from May and began to receive a salary for her work at his offices. Her salary was $14,000 per year and did not seem to correlate to the amount of hours she actually worked. Scoville never asked for and never received a raise from May. May would often "forget" to pay her and Scoville would have to "bug him about it" until he paid her. Finally, May would occasionally provide additional money for Scoville to make house payments when she needed it. Scoville filed individual tax returns. Her returns for years 1983, 1985, 1986 and 1987 describe her present address as "P.O. Box 1563, Jefferson City, Missouri 65101." During this time, the plaintiff lived at the Cleveland farm. At trial, she stated that she could not remember whether she had a post office box in Jefferson City, but admitted that it "could have been" the post office box for May's dental practice.

Helen Chalender and Traci Stroud, a mother and daughter who both worked for May in one of his dental offices and both of whom may have had relationships with May, testified by deposition, they were unavailable for trial. Chalender testified that May obtained a $10,000 money order and used it to pay off the outstanding balance due on the mortgage of the farm. May does not recall having done this. Chalender also testified that May told her that he divorced Scoville so that she could be his tax shelter. Stroud testified that she was paid in cash by May for

her work. She accompanied him to various banks where he would cash checks he received from patients. He would endorse the checks with a highlighter marker so that his signature would not show up on microfiche. May told her that he did this in order to hide money from the IRS. May also told Stroud that he divorced his wife so that he could put assets in her name and the IRS could not touch them. At the trial, May did not recall saying this to Stroud.

Scoville and May were remarried in August of 1992. They remarried because of the pending IRS investigation into May's failure to file tax returns. Scoville did not want to testify against May. Scoville admitted at trial that her personal relationship with May did not change after their second marriage. On November 3, 1992, May was indicted for willful failure to file income tax returns in violation of *26 U.S.C. § 7203*, income tax evasion in violation of *26 U.S.C. § 7201*, and currency structuring in violation of *31 U.S.C. §§ 5324(3), 5322(a) and 18 U.S.C. § 2*. That same month, Scoville and her youngest son left for a "vacation" in Costa Rica. Scoville's other four children joined her in Costa Rica a few weeks later. Scoville testified that she remained in Costa Rica because she was worried that she would be called to testify against May. After Scoville left for Costa Rica May continued to live at the Cleveland farm.

In April of 1993, the farm property was destroyed by fire. On April 15, May contacted State Farm insurance adjustor Jan Wagoner Combs ("Combs") to notify her of the fire loss and to initiate the filing of a claim. Scoville learned of the fire and contacted Combs. She would not leave a telephone number at which she could be reached; instead, she told Combs to leave a message with May, to whom Combs referred as "Mr. I." ("Mr. Insured"). Combs dealt with May because May told her to do so, and Scoville had asked May to act as a go-between. Correspondence between State Farm and Scoville was

addressed to her at May's office in Jefferson City. May filled out personal property inventory forms which were stamped with his signature and returned to State Farm; May did not sign them or return them himself because he was incarcerated at the time. State Farm needed additional information, so the forms were forwarded to Scoville. She completed them and signed them herself. Subsequently, two checks were issued to Scoville by State Farm--one for the subject real property and one for the personal property. The IRS levied upon both checks to cover May's jeopardy tax assessment of $179,185.

Conclusions of Law

In an action for wrongful levy, the plaintiff must show that she has standing by establishing that she has an interest in the property at issue. *Flores v. White, 551 F.2d 1169, 1171 (9th Cir. 1977)*. In this case, the plaintiff showed that she had an interest in the property levied upon. The subject real property was titled in her name, she had lived there, and was the named insured on the insurance policy covering the property and its contents. The furnishings and clothing in the house belonged to her and her family members. The insurance checks had been issued to the plaintiff.

After this showing has been made, the burden shifts to the Government to show a nexus between the property and the taxpayer whose debt causes the levy. *Flores, 551 F.2d at 1175.* At this stage, the Government often relies on a nominee or alter ego theory, claiming that the plaintiff is the taxpayer's nominee (when the plaintiff is a natural person) or alter ego (when the plaintiff is a corporation) and merely holds the property for the taxpayer, allowing him or her to avoid financial obligations. Whether the plaintiff is the taxpayer's nominee is determined by examining state law. *Hill v. United States, 844 F. Supp. 263, 270 (W.D.N.Car. 1993)*. Certain "badges of fraud" often appear when the Government successfully shows that the plaintiff is

the nominee of the taxpayer. In Missouri and elsewhere, the "badges of fraud" include:

1) lack of consideration;
2) transfer of the taxpayer's entire estate;
3) relationship between the taxpayer and the plaintiff;
4) pendency or threat of litigation;
5) secrecy or hurriedness of the transfer;
6) departure from the usual method of business;
7) retention by the taxpayer of possession of the transferred property;
8) reservation of benefit to the taxpayer.

First Home Savings Bank v. C&L Farms, Inc., 974 S.W.2d 621, 626 (Mo. Ct. App. 1998); Towe Antique Ford Foundation v. Internal Revenue Svc., 791 F. Supp. 1450, 1458 (D. Mont. 1992).

In this case, several of the "badges of fraud" are present, and the facts lead the court to conclude that the plaintiff was May's nominee. First, Dr. May successfully transferred nearly all of his assets to the plaintiff, or hid them in one way or another so that they could not be reached by the IRS. He was able to title the farm in the plaintiff's name only, even though he helped pay for it, lived there, kept his personal property there, and made improvements to the property. The insurance policies at issue were also set up in the plaintiff's name only. Using the divorce agreement, he was able to disclaim any dower interest he might have had in the farm, regardless of how it was titled. In the divorce agreement, he also gave the plaintiff his dental chairs and equipment, agreeing to lease them back from her so that he could continue to use them. This is not common in divorce settlements.

May also used other mechanisms to hide assets and manipulate the law to his advantage. He had automobiles and a bank account held in the name of the Basic Bible Church. He

dealt mainly in cash, and paid employees either with cash or second-party checks. He did not have a personal bank account and would cash checks made to him by his patients at the patients' banks, endorsing the checks with hilighter pens, so that his signature would not show up on microfiche. While these activities do not necessarily involve the plaintiff, they reflect May's likely intent with respect to the way he held property. Also, May divorced his wife to help him shield assets; the divorce made little difference in the family's day-to-day life. Although there was a brief separation, May and the plaintiff continued to live together, she continued to work in his office, and they had three more children during the time they were divorced. Both May and the plaintiff have testified that they continued to consider themselves married to each other after the divorce. May then married the plaintiff again, not because their relationship had changed, but because he was afraid she would have to testify against him at a criminal trial. Fearing that the marriage would not be enough to keep her off the stand, the plaintiff left the country, taking her children to Costa Rica.

The next consideration is the plaintiff's claim that she paid for the farm with her own money. While the agreement sets out that after the divorce May would pay the plaintiff child support and "salary" for her work at his office, he would often "forget" to pay her and paid her intermittently. The plaintiff did not consistently work full time for May, although her salary in no way reflected how many hours she actually worked. There is no documentation of these payments to the plaintiff, as he paid her in cash. Also, he admittedly paid the plaintiff additional money when she needed it. Accordingly, there was apparently no meaningful change in May's support of the family after the divorce, and the plaintiff has not established that she made the payments on the farm using her own independent funds.

Further, May's asset-hiding activity was in contemplation of

litigation. May admitted that part of the reason he put the farm in the plaintiff's name was to shield it from medical malpractice claims. Also, the purchase of the farm, the divorce settlement, and May's other attempts to hide assets all occurred after he was on notice of potential litigation with the IRS. May quit filing tax returns and paying taxes in 1979. He had already been audited once prior to the purchase of the farm. Even though that audit did not result in jeopardy tax assessments, May must have known that he could not continue to fail to file returns and pay taxes indefinitely without facing consequences from the Government.

May always treated the farm as though it were his own. He lived on the property, he kept his hearse (titled in the Basic Bible Church) on the property. He kept stored gold and silver on the property. He raised chickens on the property for his cock-fighting hobby, and built pens for the chickens. He planted a garden on the farm each year. He built a porch on the property to store dental equipment and records. He referred to the farm as "his farm" or "our farm." He admittedly offered to sell the farm to at least one other person before it burned down. After the fire, he arranged for the insurance claim to be filed, acted as go-between for his wife, filled out personal property inventory forms, and dealt with insurance adjustors and inspectors.

Finally, May was an insured by definition under the policy covering the farm and its contents. The policy defined insured to include a spouse if the spouse were a resident of the named insured's household. There is no question that the plaintiff and May were married at the time of the fire. The plaintiff disputes, however, that she and May were members of the same household when the fire occurred. Under Missouri law, the term "household" refers to a

> collection of persons, whether related by consanguinity or affinity or not related at all but who live or reside

> together as a single group or unit which is of a permanent and domestic character, with one head, under one roof or within a single curtilage; who have a common subsistence and who direct their attention toward a common goal consisting of their mutual interest and happiness.

Watt by Watt v. Mittelstadt, 690 S.W.2d 807, 815-16 (Mo. Ct. App. 1985); Cameron Mut. Ins. Co. v. Marler, 926 S.W.2d 62, 64 (Mo. Ct. App. 1996). The plaintiff and Dr. May fit this definition. They lived together at the farm, they worked together, they raised their children together, although the plaintiff felt that May was too hard on the children. They shared at least one common goal in that they arranged their lives as much as possible to keep Dr. May out of jail. The plaintiff had intended to return to the farm and would have done so had it not burned to the ground. Her temporary sojourn in Costa Rica did not remove her from the household. While the plaintiff now claims that she had had enough of May's abuse and adultery, she had apparently known about it and accepted it in the past. The plaintiff cites no cases stating that acts of adultery or abuse prevent a married couple from being members of the same household for homeowner insurance purposes. Also the plaintiff evidently did not tell May of her decision to leave, as he had not obtained a residence other than the farm until it burned, and he bought the plaintiff several expensive kitchen appliances after the fire, which he later claimed were stolen from the barn on the property. Even at the time of trial, although clever enough to have an address separate from May's, the plaintiff resided at 1223 Southwest Boulevard in Jefferson City, which was just down the street from May's Jefferson City office at 1312 Southwest Boulevard. The facts establish that the plaintiff and May were members of the same household, thus rendering him an insured by policy definition. Since Dr. May was an insured

by policy definition and had an interest in the farm property, he also had an interest in the insurance proceeds.

Other courts have found a nexus between the taxpayer and the subject property with far less evidence than was available to the court in this case. In *Hill v. United States, 844 F. Supp. 263 (W.D. N.Car. 1993)*, this nexus was shown by proving that the taxpayer and his wife lived on the subject property; the taxpayer built the house sitting on the property; the house was built with a kit purchased with checks issued in the taxpayer's name; and the taxpayer claimed the property as his own on the building permit applications. The plaintiff, the taxpayer's daughter, did not live on the subject property. In *Morris v. United States, 813 F.2d 343 (11th Cir. 1987)*, the nexus was shown when the Government proved that the plaintiff could not have purchased the subject property, as he did not have enough money; the property was actually purchased with checks written on the taxpayer's girlfriend's account; the taxpayer had made regular deposits in his girlfriend's account; and the plaintiff was the taxpayer's father.

In this case, the court holds that the plaintiff was May's nominee, or at least the nominee of the May family, and that the Government has shown the requisite nexus between the taxpayer, May, and the insurance proceeds, at least for the real property. The personal property belonged partially to May, partially to the entire family, and partially to the plaintiff or her children exclusive of May. The Government has not shown sufficiently which portion of the insurance proceeds for the personal property belong exclusively to the plaintiff and her children and would, therefore, have been levied wrongfully. Accordingly, the Government has only shown the requisite nexus with respect to the personal-property reimbursement which the plaintiff concedes belonged exclusively to May, $14,040.

When the Government shows a nexus between the taxpayer and the property, the taxpayer must then show that the levy was wrongful by establishing that the taxpayer had no interest in the property. The Ninth Circuit, in *Flores* called this "really the identical question" as whether the nexus exists between that taxpayer and the property, and thus placed the burden of persuasion on the Government. Id. It stated, "Principles of fair play and common sense dictate the result which we reach." *551 F.2d at 1175-76.*[3]

At least one other court apparently does not find the nexus and the wrongfulness of the levy "really the identical question." A district court found in *Hill, supra, at 271*, that although the Government showed a nexus between the taxpayer and the

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3. The *Flores* court held that the Government had not shown the requisite nexus between the taxpayer and the property, and thus that the levy was wrongful. It qualified this holding, however, stating,

> We are not here faced with a situation in which the Government demonstrates a nexus between the taxpayer and the property by a preponderance of the evidence, but the plaintiff makes a claim to the property derivatively from the taxpayer, through gift or otherwise. Obviously that situation is different from the present case, and our holding is limited to a requirement that the Government trace the property to the taxpayer.

Id. at 1176 n.8 (citations omitted). In this case, plaintiff does claim in her brief that all property and money given to her by her husband were gifts, and uses the Missouri presumption to support her argument. Accordingly, the plaintiff does not present the same case that the court faced in Flores.

property in question, the plaintiff met her burden of showing the levy was wrongful by showing her father (the taxpayer) had no interest in the property. In that case, as stated above, the Government showed the nexus by proving that the taxpayer lived in the property, that he had claimed it as his own when applying for building permits, and that he built the house himself using a kit purchased with checks drawn in his own name.

The plaintiff then showed that the levy was nonetheless wrongful because her father had no interest in the property. He was thus not her nominee and he did not defraud his creditors by placing assets in his daughter's name. Although he purchased the materials kit for the house on the property, the money came from a safe which was filled with the plaintiff's money that her grandfather had given her. She also intended to return and live in the property herself some day. The property was titled in the plaintiff's name.

In this case, the plaintiff alleges that the levy was wrongful because any ownership interest May would have had in the farm was given to Scoville, either as a gift, or as part of the divorce settlement. The plaintiff points to several Missouri cases holding that any transfer of property from a husband to his wife is presumed to be a gift or advancement. *See, e.g., Gilliland v. Gilliland, 96 Mo. 522, 10 S.W. 139 (1888).* Plaintiff also cites *Mo. Rev. Stat. § 451.250*, which provides that all property belonging to a woman at her marriage, or which may have come to her during the marriage by gift, bequest or inheritance, or by purchase with her separate money or means is her separate property.

As an illustration of the presumption in operation, the plaintiff relies chiefly upon the Tenth Circuit case, *Pate v. United States, 949 F.2d 1059 (10th Cir. 1991).* In Pate, a home was purchased and titled in the wife's name although the

husband paid the purchase price. Relying "primarily" on the presumption in favor of a resulting trust when title to real property is taken in one person's name but the purchase price is paid by another, the district court found that the home could be used to pay the tax debts of the husband. Id. at 1060. The Tenth Circuit reversed, holding that "when a husband purchases property for his wife, not only is the resulting trust presumption inapplicable, but the wife is entitled to the opposing presumption that the property is hers alone by way of a gift or advancement." *Id. at 1061*. Importantly, in *Pate*, the Tenth Circuit did not find any other basis for ascribing the property to the husband. It was not shown that the husband attempted to shield other assets as May did, using other nominees or dealing only in cash. Critically, the Tenth Circuit noted in *Pate* that the acquisition of the subject property "was not tainted by any existing and accruing tax liabilities, which did not arise until years later." By the time Scoville and May purchased the farm in 1983 and subsequently divorced, May had already failed to file income tax returns or pay taxes for several years, since 1979, and had already been audited once. Accordingly, even though the jeopardy assessment did not come until 1993, the structuring of the May's assets which occurred ten years earlier in the purchasing of the home and the divorce settlement are tainted by the near certainty of future tax liabilities.

Finally, Pate was seriously limited recently in the Tenth Circuit's decision in *McGavin v. Segal, 189 F.3d 1215, (10th Cir. 1999)*. In *McGavin*, a husband placed a home in his wife's name although he resided in it with her and paid the taxes, insurance and other bills for the property. The husband also placed other assets in the name of his wife and a corporation. The Tenth Circuit stated that the district court in *McGavin* did not simply rely on the inapplicable general rule that a resulting trust was presumed when the purchase price was paid by

someone other than the person in whose name the property was titled. Since the district court in *McGavin* considered other factors, sufficient to impose a constructive trust, the court found the cases distinguishable. *Id. at 1218-1219.*

Further, the presumptions in *Gilliland, Pate* and similar cases are rebuttable. When a couple structures assets such as the Mays did to avoid tax liability, the presumption may well be rebutted. In *Kaiser v. Kaiser, 722 F.2d 1574, 1583 (2nd Cir. 1983)*, the Second Circuit stated that "the transfer of property by the debtor to his spouse while insolvent, while retaining the use and enjoyment of the property, is a classic badge of fraud." In *Kaiser*, the husband purchased two homes with his own money, but placed the homes in his wife's name. He was insolvent at the time. He lived in the homes with his wife and treated the properties as his own. Id. He also created dummy corporations to hide other assets. While not mentioning any presumption of gift, the Second Circuit allowed the homes to cover the husband's debts, even though they were titled in the wife's name. The court finds the case at bar much more similar to *Kaiser* than to *Pate*. Even though May still had his dental practice,[4] and so was technically not insolvent after the divorce agreement, the remainder of his property went either to the plaintiff or was titled in the name of the Basic Bible Church, so that he had no property which could readily be used to satisfy his tax debt.

Finally, the plaintiff argues that the levy was improper because in Missouri, the plaintiff and Dr. May could have held the property as tenants by the entirety, which would have rendered the property unavailable to pay the debts of only one

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4. The court also notes that May's practice included no dental equipment, but only a lease with May's ex-wife for the necessary equipment.

of the spouses, Dr. May. While it is true that the parties could have structured their property so that they were tenants by the entirety, they specifically chose not to so structure the property, instead putting the farm in the plaintiff's name only. They may not now claim to take advantage of Missouri law with respect to tenancy by the entirety. *See Herndon v. United States, 501 F.2d 1219, 1221 (8th Cir. 1974)* (holding that while the plaintiff and her husband could have held the subject property as tenants by the entirety under Arkansas law, they held the property under the husband's name only, thereby exposing the property to levy for the debts of only one spouse).[5]

The plaintiff also claims that the levy on the insurance proceeds violated her constitutional due process rights. First, she contends that the failure of the Government to notify her of the levy violated her due process and statutory rights. *26 U.S.C. § 6335(a)* provides that notice of seizure shall be given "to the owner of the property (or, in the case of personal property, the possessor thereof). . . ." The insurance proceeds are personal property, and the United States notified the holder of the proceeds, State Farm, of the seizure. Therefore the statutory notice provisions were satisfied.

In a similar situation, the Southern District of Georgia held that, so long as statutory notice had been given, no due process rights were violated. *Douglas v. United States, 562 F. Supp. 593, 596-97 (S.D. Ga. 1983)*. In *Douglas*, a woman's savings account was seized pursuant to a levy, and used to satisfy the delinquent taxes of her son, whose name was also on her account. The woman could apparently show that the account

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5. To the extent the defendant suggests a presumption that personal property is held jointly or by the entireties (Brief, p. 76 n. 11), it has not established that the result would be more favorable than is reached here.

funds belonged entirely to her under state law and that her son had no interest in them, and thus the IRS levy would have been wrongful. Her wrongful levy claim, however, was outside the limitations period. She claimed that her due process rights had been violated in that she was never given notice of the seizure of the account funds. The court held that the bank had been notified as possessor of the property pursuant to the statute, and thus due process had been satisfied.

Scoville next claims that her due process rights were violated because she was not given a full pre-seizure or post-seizure hearing. The Supreme Court of the United States has approved the Internal Revenue Code's levy procedure. In *United States v. National Bank of Commerce, 472 U.S. 713, 86 L. Ed. 2d 565, 105 S. Ct. 2919 (1985)*, the Court found that the wrongful levy action under *§ 7426(a)* of the Code adequately protects the rights of third parties who claim that their property was wrongfully levied upon to satisfy the tax liabilities of another individual. *Id. at 728.* The Court found that this statutory scheme "balanced the interest of the Government in the speedy collection of taxes against the interests of any claimants to the property, and reconciled those interests by permitting the IRS to levy on the assets at once, leaving ownership to be resolved in a post-seizure administrative or judicial proceeding." *Id. at 729.*

Various circuit courts presented with the plaintiff's arguments have also concluded that the process provided third parties in the wrongful levy process was constitutionally adequate. *Myers v. United States, 647 F.2d 591 (5th Cir. 1981), and Valley Finance, Inc. v. United States, 203 U.S. App. D.C. 128, 629 F.2d 162 (D.C. Cir. 1980)*, both held that since *§ 7426(a)* allows third parties to bring an action for wrongful levy immediately after seizure, the third parties were provided due process. Further, Myers found that the third party

challenging the seizure was not constitutionally entitled to contest the validity of the tax assessment giving rise to the liens upon which the levy was based. *Myers, 647 F.2d at 603*. The cases cited by plaintiff are not to the contrary. Because the Internal Revenue Code's levy procedures were followed in this case, the plaintiff shows no due process violations.

For all of the above reasons, the court concludes that the levy of the insurance proceeds for the real property was proper, as the plaintiff held the property as a nominee of Dr. May and the May family, which included taxpayer Dr. Joseph May. The court also concludes that the levy of the insurance proceeds for the personal property was proper to the extent of $14,040, the amount which the Government has proven the taxpayer had an interest. The remainder of the total proceeds of $60,688 is not shown to be for his personal property.[6] Accordingly, it is

ORDERED that the clerk enter judgment in favor of the plaintiff in the amount of $46,648.22, the amount of the insurance proceeds for the contents of the dwelling not shown by the United States to have been solely owned by the taxpayer, Dr. May. It is further

ORDERED, pursuant to 26 U.S.C. § 7426(g), plaintiff is

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6. In Missouri, the presumption is that property (including personal property) owned jointly by married persons is held as a tenancy by the entirety. *Seabaugh v. Seabaugh, 839 S.W.2d 49, 50 (Mo. Ct. App. 1992)*. Unless there is some reason to attribute the debt to both spouses, the property held by the entirety cannot be used to satisfy the debt; the lien simply does not attach. *United States v. Hutcherson, 188 F.2d 326, 330-31 (8th Cir. 1951)* (Missouri law, cited with approval in *Tony Thornton Auction Svc. Inc. v. United States, 791 F.2d 635, 637 (8th Cir. 1986)*). Because the personal property was not formally titled, the presumption applies here.

awarded interest on the judgment entered in her favor from November 18, 1993 (the date the IRS received the insurance proceeds for the plaintiff's personal property wrongfully levied upon), to the date of judgment.[7] The plaintiff is ordered to submit an application setting forth the applicable interest rate and the amount of interest to which she is entitled within thirty days of the date of this order.

/s/ Howard F. Sachs
HOWARD F. SACHS
United States District Judge

Dated: December 3, 1999.

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7. Post-judgment interest will continue to accrue.